32743 SERVICE DATE - JULY 12, 2002
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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 3X)[1]

NEW YORK CENTRAL LINES, LLC — ABANDONMENT
EXEMPTION — IN BERKSHIRE COUNTY, MA

IN THE MATTER OF A REQUEST TO SET TERMS AND CONDITIONS

Decided: July 10, 2002

By petition filed on April 29, 2002, New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) (collectively referred to as CSX) seek reopening of this proceeding to adjust the net liquidation value (NLV) that we determined in our decision served on April 19, 2002 (April 19th decision) setting terms and conditions for the purchase of the line. Housatonic Railroad Company (Housatonic) filed a memorandum in opposition to the petition on May 13, 2002, and CSX filed a letter in reply on May 15, 2002. We will reopen the proceeding for the limited purpose of correcting an error in our computation of the NLV of Parcel 1, as sought by CSX, and, upon our own motion, to correct the same error in our computation of the NLV of Parcel 3.

BACKGROUND

On July 24, 2001, NYC and CSXT filed a notice of exemption under 49 CFR 1152 subpart F for NYC to abandon, and for CSXT to discontinue service over, approximately 1.91 miles of railroad (the Line) in the City of Pittsfield, in Berkshire County, MA, between MP QBY-0.59 and MP QBY-2.50. Notice of the exemption was served and published in the Federal Register on August 13, 2001 (66 FR 42582-83).

On March 21, 2002, Housatonic, which had previously filed an offer of financial assistance (OFA) to purchase the Line, filed a request (Housatonic's Request) for the Board to set the terms and conditions of the sale pursuant to 49 U.S.C. 10904(e) and (f). Housatonic claimed that the Line's NLV was $23,742. On March 26, 2002, CSX filed a response (CSX's Response) to Housatonic's Request, asserting that the Line's NLV was $450,000.

[1] The notice of exemption filed in this proceeding embraced STB Docket No. AB-55 (Sub-No. 595X), CSX Transportation, Inc. — Discontinuance of Service Exemption — in Berkshire County, MA.

In our April 19th decision, we set the purchase price for the Line at its NLV, which we found to be $215,053, the sum of the separately calculated NLVs of the three parcels into which CSX's appraiser had divided the Line.[2] In that decision, we also denied Housatonic's request that it be allowed to pick which segments of the Line to purchase; we imposed the customary OFA closing terms; we denied Housatonic's request for the imposition of incidental trackage rights; and we denied Housatonic's request for an order requiring that the Line be treated as a part of Housatonic's Berkshire Line for traffic and ratemaking purposes. By letter filed on April 26, 2002, Housatonic advised that it accepted the terms and conditions established in our April 19th decision for the purchase of the Line.

In its petition, CSX contends that we should reopen the April 19th decision to the limited extent necessary to correct certain alleged errors in the valuation of Parcel 1, which caused us to set a purchase price for the Line below the Line's fair market value (FMV). CSX alleges that we erred by: (1) understating the Parcel 1 base value; and (2) double counting the discounts to be applied to this base value. To correct these errors, CSX would adjust the Parcel 1 base value upwards to $2.055 per sq. ft. and eliminate the -40% adjustment advocated by Housatonic, thereby increasing the gross valuation of Parcel 1 alone to $231,760[3] and the NLV of the entire Line to $345,904. CSX does not challenge our findings as to the NLV for Parcels 2 and 3.[4]

In response, Housatonic argues procedurally that a petition to reopen a decision setting terms and conditions is precluded by 49 U.S.C. 10904(f)(2) and 49 CFR 1152.27(h)(7). Substantively, Housatonic claims that CSX is not seeking merely to have us correct a mathematical error, but is challenging the rationale and findings in our April 19th decision. Finally, Housatonic suggests that we also made an error in calculating the NLV of Parcel 2, which we should correct on our own initiative.[5]

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[2] We found that the NLV of Parcel 1 was $55,489; the NLV of Parcel 2 was $89,571; and the NLV of Parcel 3 was $69,993.

[3] CSX calculates this valuation of Parcel 1 by multiplying the area of Parcel 1 (225,557 sq. ft.) by a $2.055 per sq. ft. base value (which yields $463,520), and then multiplying $463,520 by 0.5 (to account for CSX's -30% topography adjustment and its -20% utility adjustment).

[4] Nevertheless, as discussed below, we are also revising our calculation of the NLV of Parcel 3 to address the same error that CSX has pointed out with respect to Parcel 1.

[5] CSX regards Housatonic's reference to this matter as a petition for reconsideration, and urges us to reject it because it was late filed and because Housatonic did not pay the appropriate filing fee. CSX's request to reject will be denied because Housatonic has merely suggested that we correct, on our own initiative, an alleged error in the calculation of the NLV of Parcel 2.

DISCUSSION AND CONCLUSIONS

We are reopening this proceeding in order to correct an error in two sections of the April 19th decision, but otherwise denying the petition. The new purchase price we are setting is the corrected NLV of $342,361.

Standard of Review.

The statutory provision authorizing the Board to establish binding terms for an OFA sale, 49 U.S.C. 10904(f)(2), and our regulations implementing it, 49 CFR 1152.27(h)(7), do not contemplate administrative appeals to our decisions setting the terms and conditions for OFA sales. See Abandonment of Railroad Lines & Discontinuance of Service, 365 I.C.C. 249, 261 (1981). Given the unusually tight statutory time frames evidencing a clear Congressional intent to expedite proceedings under section 10904, it is essential that parties in these proceedings present all potentially relevant evidence and arguments prior to our decision setting the terms and conditions of an OFA sale, and that our decision be final and conclusive. Thus, it would not be appropriate for us to entertain requests to revisit our determinations on as broad a basis as we might in other types of proceedings.

Nevertheless, we have general authority to reopen an administratively final action at any time based on material error, new evidence, or substantially changed circumstances, 49 U.S.C. 722(c), and we have discretion as to whether or not to take such action. See 49 CFR 1115.3, 1115.4. Where, as here, we clearly misinterpreted the evidence that was before us, we will reopen to correct our mistake. See, e.g., Railroad Ventures, Inc.—Abandonment Exemption—Between Youngstown, OH, and Darlington, PA in Mahoning and Columbiana Counties, OH, and Beaver County, PA, STB Docket No. AB-556 (Sub-No. 2X) (STB served Oct. 4, 2000), at 16-17 (reopened decision setting terms and conditions to correct erroneous failure to consider certain timely submitted evidence regarding land value).

Because we agree with CSX that we erroneously double counted certain discounts to Parcel 1's base value, we are granting CSX's petition to reopen to the limited extent necessary to correct that error. Moreover, because we used the same methodology to compute the NLV of Parcel 3 as Parcel 1, we will correct the error as to that part of our decision as well. However, because we do not find any other errors in our April 19th decision, we are denying CSX's petition to the extent it seeks additional relief with respect to the valuation of Parcel 1, and we are denying Housatonic's request that we revalue Parcel 2.

Base Property Value.

Parcel 1. We are denying CSX's request that we undertake a new calculation of the base value of Parcel 1. In the April 19th decision, we rejected CSX's assimilated land value of $3.13 per sq. ft. for Parcel 1. This assimilated value was based on a 50/50 split between the sale of four

commercial and eight industrial properties, assigning a $5.00 per sq. ft. value for the commercial land and a $1.25 per sq. ft. value[6] for the industrial land [($5.00 + $1.25)/2 = $3.13 per sq. ft.].

Contrary to CSX's impression, we did not reject the $3.13 per sq. ft. figure based on the criticisms that Housatonic had presented about CSX's industrial comparables, but rather because the evidence on the commercial comparables was flawed. See April 19th decision at 7. Specifically, three of the commercial land parcels contained buildings, the value of which had not been separately identified. And even though CSX argued that its commercial comparables had been adjusted to reflect the removal of the buildings from each of those land parcels, CSX had presented no evidence showing that such an adjustment had been made. Id.

In its petition, CSX argues that, instead of rejecting its assimilated figure entirely, we should restate the base value for Parcel 1 by using its comparable sales figures for the industrial land component and, for the commercial component, substituting four new commercial land values taken from tax assessment records contained in Housatonic's evidence in lieu of the four commercial comparables initially offered by CSX. CSX's suggestion is both procedurally and substantively inappropriate.

Procedurally, the parties must present all of their evidence and arguments — including possible alternative approaches — in the pleadings that they submit before we set the terms and conditions of an OFA sale. CSX could have suggested this valuation method previously, but chose not to do so, and it is not entitled to have alternative approaches that were not timely presented to us considered now.

Substantively, we do not base real estate valuations on tax assessment records when other, more reliable evidence (here, the appraisal submitted by Housatonic) is available. See Chelatchie Prairie R.R. – Abandonment – In Clark County, WA, ICC Docket No. AB-228, 1985 ICC LEXIS 72 (Nov. 21, 1985), at *7 ("we [prefer] not to use tax assessment determinations as the basis of our real estate appraisal."); Union Pac. R.R.–Abandonment Exemption–In Rock, Green and Dane Counties, WI, STB Docket No. AB-33 (Sub-No. 119X), 1998 STB LEXIS 843 (STB served Nov. 2, 1998), at *6 ("tax assessments are not necessarily an accurate measure of market value.").

Parcel 2. In the April 19th decision, we adopted CSX's land value for Parcel 2 based on a 30%/70% ratio of $0.25 per sq. ft. for residential acreage and $3.60 per sq. ft. for residential lots, for an overall unit cost of $1.26 per sq. ft. [($0.25 x .70) + ($3.60 x .30)].[7]

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[6] As discussed in the April 19th decision, at 6, CSX used only five of its eight industrial comparables, eliminating the highest and two lowest appraisals, to arrive at the $1.25 per sq. ft. value.

[7] CSX had argued that, although the Line's right-of-way is too narrow for lot development

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In concluding that the land in Parcel 2 could not be used alone but could be merged with other residential property for residential development, Housatonic argues that we in effect found that this land was residential acreage.[8] Housatonic therefore claims that we should have used CSX's value of $0.25 per sq. ft. for residential acreage in calculating the value of Parcel 2. We disagree.

We specifically rejected Housatonic's contention that none of the Parcel 2 land is capable of being developed and therefore the parcel is worth only a token $1 per acre. See April 19th decision at 8. Housatonic alternatively characterized this land as suitable solely for residential acreage (unimproved, without any building lots) with a value of $0.25 per sq. ft. However, given its physical characteristics, it appears that at least some of Parcel 2 could be incorporated into residential lots. Thus, we found that CSX's valuation – which included an assessment that a substantial portion (70%) could be improved while the remainder (30%) might remain unimproved — was more credible than Housatonic's, which reflected a monolithic approach to the potential use of Parcel 2 property. Therefore, our acceptance of CSX's blended unit cost of $1.26 per sq. ft., based on a combination of residential acreage and residential lots, was intentional and not inadvertent as Housatonic claims.

Double Counting of Discounts.

Parcel 1. In the April 19th decision, at 7, we made two discounts to the $50,084 per acre ($1.15 per sq. ft.) figure. First, we applied Housatonic's -40% adjustment to account for the quality of use and neighborhood quality of Parcel 1. This -40% adjustment was applied directly to the $50,084 per acre ($1.15 per sq. ft.) figure, and resulted in a $30,050 per acre ($0.69 per sq. ft.) base value. Second, we found that the value of Parcel 1 had to be further reduced for its topography and limited utility. We therefore halved the total base square footage value of Parcel 1 to account for CSX's -50% adjustment, resulting in a $77,817 restated valuation of Parcel 1.

CSX contends that our adoption of both Housatonic's -40% adjustment and CSX's -50% reduction decreased the value of Parcel 1 twice for the same factors affecting the value of the real estate.[9] CSX argues that the double count improperly reduced the value of Parcel 1 below FMV.

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[7](...continued)
alone, adjacent landowners could merge a portion of the right-of-way with another lot, which could then be used to develop new lots for residential construction. See April 19th decision at 8.

[8] Residential lots are improved parcels of residentially zoned land, while residential acreage is unimproved residentially zoned land.

[9] Compare Housatonic's Request, Exhibit C-1 at 56-57, 61, which argued that downward
(continued...)

In reply, Housatonic contends that there was no double count in our valuation of Parcel 1. Housatonic explains that the first step in determining NLV is to establish a base unit value, which is determined by identifying roughly comparable properties and then adjusting the value for factors such as neighborhood quality and date of sales. Housatonic argues that we correctly accepted, as reasonable and the best evidence of record, Housatonic's $0.69 per sq. ft. adjusted comparable value. Housatonic further explains that the second step in determining NLV is to discount the comparable unit value for topography and utility. Housatonic argues that its appraiser would not have applied a -75% reduction to the $0.69 per sq. ft. figure if the topography and utility discounts had already been made. And, Housatonic adds, after we rejected Housatonic's -75% reduction in favor of CSX's -50% reduction, we applied CSX's -50% reduction in a correct manner.

We agree with CSX that we erred in applying to Parcel 1's base value both Housatonic's -40% adjustment and CSX's -50% reduction. Because these two discounts account for essentially the same conditions, the application of both amounts to a double count. We will correct this error by retracting CSX's -50% reduction and by applying to the $1.15 per sq. ft. figure only Housatonic's -40% adjustment.[10] Because we used Housatonic's land valuation evidence, we use its adjustment as the single discount for the physical characteristics and limitations of Parcel 1.

Parcel 3. In our April 19th decision, at 8-9, we calculated the NLV of Parcel 3 using the same methodology as for our calculation of the NLV of Parcel 1. Having acknowledged and corrected the double count in Parcel 1's NLV computation, we will correct the same error in our Parcel 3 NLV computation.

In computing Parcel 3's NLV, we applied to its base value both Housatonic's -20% adjustment and CSX's -45% reduction. Because these two discounts also account for essentially the same conditions,[11] the application of both results in a double count. We will correct this error by

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[9](...continued)
adjustments were warranted to account for quality of land (including characteristics such as topography), quality of use (including factors such as zoning, easements, restrictions, rights-of-way), and neighborhood quality (basic physical nature of improvements surrounding the appraised land) with CSX's Response, Volume II at 31, which argued that downward adjustments were warranted to account for topography/elevation and utility or use of the site.

[10] This method of applying Housatonic's adjustment to Housatonic's valuation is consistent with our application of CSX's adjustment to CSX's valuation for Parcel 2. See April 19th decision at 8.

[11] Compare Housatonic's Request, Exhibit C-1 at 50 (downward adjustments made for quality (continued...)

retracting CSX's -45% reduction and by applying to the $1.15 per sq. ft. figure only Housatonic's -20% adjustment.[12] Again, because we used Housatonic's land valuation evidence, we accept its adjustment as the single discount for the physical characteristics and limitations of Parcel 3.

Recalculation Of The Line's NLV.

Based on the above, we recalculate the NLV of the Line as follows:

Gross Valuation Of Parcel 1. The elimination of double counting increases the gross valuation of Parcel 1 to $155,635. This figure is calculated: by multiplying the area of Parcel 1 (225,557 sq. ft.) by the $1.15 per sq. ft. figure (which yields $259,391); and then multiplying by 0.6 to account for Housatonic's -40% adjustment.

Gross Valuation Of Parcel 3. The elimination of double counting increases the gross valuation of Parcel 3 to $159,900. This figure is calculated: by multiplying the area of Parcel 3 (173,804 sq. ft.) by the $1.15 per sq. ft. figure (which yields $199,875); and then multiplying by 0.8 to account for Housatonic's -20% adjustment.

Reallocation Of The Cost Of Restoration Of Crossings, Culvert Repair, And Erosion Control. As indicated in the April 19th decision, at 9, we have accepted Housatonic's costs for restoration of crossings, culvert repair, and erosion control ($7,636; $10,000; and $7,500, respectively). As further indicated in the April 19th decision, the $7,636 restoration of crossings cost is allocated entirely to Parcel 1, whereas the $10,000 culvert repair cost and the $7,500 erosion control cost are allocated to all three parcels in proportion to each parcel's valuation ($155,635 and $159,900 for Parcels 1 and 3, respectively, as determined in this decision; $112,378 for Parcel 2, as determined in the April 19th decision). Thus, of the $10,000 culvert repair cost, $3,637 will be allocated to Parcel 1, $2,626 to Parcel 2, and $3,737 to Parcel 3. The $7,500 erosion control cost will be allocated: $2,728 to Parcel 1, $1,969 to Parcel 2, and $2,803 to Parcel 3.

NLV Of Parcel 1: $120,389. The NLV of Parcel 1 is calculated: by subtracting the $7,636 restoration of crossings cost, the $3,637 culvert repair cost, and the $2,728 erosion control cost from

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[11](...continued)
of land and quality of use) with CSX's Response, Volume II at 31 (downward adjustments made for topography/elevation and utility).

[12] This method of applying Housatonic's adjustment to Housatonic's valuation is similarly consistent with our application of CSX's adjustment to CSX's valuation for Parcel 2. See April 19th decision at 8.

the gross valuation of $155,635 (which yields $141,634); and then by subtracting $21,245 (15% of $141,634) in sales costs. This yields a Parcel 1 NLV of $120,389.

NLV Of Parcel 2: $91,616. The NLV of Parcel 2 is calculated: by subtracting the $2,626 culvert repair cost and the $1,969 erosion control cost from the gross valuation of $112,378 (which yields $107,783); and then by subtracting $16,167 (15% of $107,783) in sales costs. This yields a Parcel 2 NLV of $91,616.

NLV Of Parcel 3: $130,356. The NLV of Parcel 3 is calculated: by subtracting the $3,737 culvert repair cost and the $2,803 erosion control cost from the gross valuation of $159,900 (which yields $153,360); and then by subtracting $23,004 (15% of $153,360) in sales costs. This yields a Parcel 3 NLV of $130,356.

NLV Of The Line: $342,361. The recalculated NLV of the entire Line is the sum of the separately recalculated NLVs for Parcels 1, 2, and 3: $342,361.

Substitution Of Corporate Affiliate As Purchaser.

In a letter filed on June 13, 2002, Housatonic has requested permission to substitute its corporate affiliate, Coltsville Terminal Company, Inc. (Coltsville), as the purchaser of the Line. Housatonic indicates that Coltsville, like Housatonic, is a wholly owned subsidiary of Housatonic Transportation Company. Coltsville was created for the purpose of acquiring the Line, and has reached an agreement with Housatonic under the terms of which Coltsville will acquire and Housatonic will operate the Line. Housatonic further indicates that it guarantees the performance by Coltsville of Coltsville's obligations under 49 CFR 1152.27, including payment by Coltsville of the purchase price for the Line.

Under 49 CFR 1152.27(i)(1), an offeror is permitted to substitute its corporate affiliate as the purchaser under an agreement, provided we have determined either that: (1) the original offeror has guaranteed the financial responsibility of its affiliate; or (2) the affiliate has demonstrated financial responsibility in its own right. Here, because the original offeror (Housatonic) has guaranteed the financial responsibility of its affiliate (Coltsville), the substitution of Coltsville for Housatonic will be permitted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CSX's request that we reject the portion of Housatonic's memorandum that is addressed to Parcel 2 is denied, and Housatonic's suggestion that we revise the valuation of Parcel 2 is denied.

2. CSX's petition to reopen is granted to the extent necessary to correct our error in the calculation of the NLV of Parcel 1. In all other respects the petition to reopen is denied. On our own motion, we also correct the same error in our calculation of the NLV of Parcel 3.

3. The purchase price for the Line is set at the corrected NLV of $342,361, and the parties must comply with the other terms of sale discussed in our April 19th decision.

4. Coltsville is substituted for Housatonic as the purchaser of the Line.

5. To accept the recalculated purchase price established in this decision and the other terms and conditions established in the April 19th decision, Coltsville must notify the Board and CSX, in writing, on or before July 22, 2002.

6. If Coltsville accepts the recalculated purchase price established in this decision and the other terms and conditions established in the April 19th decision, Coltsville and CSX will be bound thereby.[13]

7. If Coltsville withdraws the offer heretofore made by Housatonic, or does not accept, with a timely written notification, the recalculated purchase price established in this decision and the other terms and conditions established in the April 19th decision, we will serve a decision by August 1, 2002, vacating the prior decision that postponed the effective date of the decision authorizing abandonment.

8. This decision is effective on July 12, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary

[13] If Coltsville accepts the recalculated purchase price established in this decision and the other terms and conditions established in the April 19th decision, closing must occur within 90 days of the service date of this decision, unless Coltsville and CSX agree on a different closing date.